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What You Should Know About EEOC and the Enforcement Protections for LGBT Workers

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Overview

EEOC interprets and enforces Title VII's prohibition of sex discrimination as forbidding any employment discrimination based on **gender identity or sexual orientation**. These protections apply regardless of any contrary [state or local laws](#).

Through investigation, conciliation, and [litigation](#) of charges by individuals against private sector employers, as well as [hearings and appeals](#) for federal sector workers, the Commission has taken the position that existing sex discrimination provisions in Title VII protect lesbian, gay, bisexual, and transgender (LGBT) applicants and employees against employment bias. The Commission has obtained approximately \$6.4 million in

See Also:

- [Recent EEOC Litigation Regarding Title VII & LGBT-Related Discrimination](#)
- [Examples of Court Decisions Supporting Coverage of LGBT-Related Discrimination Under Title VII](#)
- [Federal Sector Cases Involving LGBT Individuals](#)
- [Addressing Sexual Orientation and Gender Identity Discrimination in Federal Civilian Employment: A Guide to Employment Rights, Protections, and Responsibilities](#)
- [Fact Sheet: Bathroom Access Rights for Transgender Employees Under Title VII of the Civil](#)

The information provided below highlights what you should know about EEOC's outreach and enforcement in this area.

Examples of LGBT-Related Sex Discrimination Claims

Some examples of LGBT-related claims that EEOC views as unlawful sex discrimination include:

- Failing to hire an applicant because she is [a transgender woman](#).
- Firing an employee because he is planning or has made a [gender transition](#).
- Denying an employee equal access to a common [restroom](#) corresponding to the employee's gender identity.
- Harassing an employee because of a gender transition, such as by intentionally and persistently [failing to use the name and gender pronoun that correspond to the gender identity with which the employee identifies](#), and which the employee has communicated to management and employees.
- Denying an employee a promotion because he is [gay or straight](#).
- Discriminating in [terms, conditions, or privileges of employment](#), such as providing a lower salary to an employee because of sexual orientation, or denying spousal health insurance benefits to a female employee because her legal spouse is a woman, while providing spousal health insurance to a male employee whose legal spouse is a woman.
- [Harassing](#) an employee because of his or her sexual orientation, for example, by derogatory terms, sexually oriented comments, or disparaging remarks for associating with a person of the same or opposite sex.
- Discriminating against or harassing an employee because of his or her sexual orientation or gender identity, in combination with another unlawful reason, for example, on the basis of transgender status and race, or sexual orientation and disability.

See [How to File a Charge of Employment Discrimination](#) for information about filing a Title VII charge of sex discrimination in employment related to gender identity or sexual orientation bias. There is a different [complaint process for federal employees](#).

Applicable Federal Law

EEOC is responsible for enforcing federal laws that make it illegal to discriminate in employment against a job applicant, employee, or former employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. These federal laws also prohibit employers from retaliating against workers who oppose discriminatory employment practices - for example, by reporting incidents of sexual harassment to their supervisor or human resources department - or against those who participate in an employment discrimination proceeding - for example by filing an EEOC charge, cooperating with an EEOC investigation, or participating in an employment discrimination lawsuit.

While Title VII of the Civil Rights Act of 1964 does not explicitly include sexual orientation or gender identity in its list of protected bases, the Commission, consistent with Supreme Court case law holding that employment actions motivated by gender stereotyping are unlawful sex discrimination and other [court decisions](#), interprets the statute's sex discrimination provision as prohibiting discrimination against employees on the basis of sexual orientation and gender identity.

Over the past several years the Commission has set forth its position in several published decisions involving

considered unlawful. In so ruling, the Commission has not recognized any new protected characteristics under Title VII. Rather, it has applied existing Title VII precedents to sex discrimination claims raised by LGBT individuals. The Commission has reiterated these positions through recent [amicus curiae briefs](#) and [litigation](#) against private companies.

Sex Discrimination - Transgender Status

In [Macy v. Dep't of Justice](#), EEOC Appeal No. 0120120821, 2012 WL 1435995 (April 20, 2012), the Commission held that intentional discrimination against a transgender individual because that person's gender identity is, by definition, discrimination based on sex and therefore violates Title VII.

The *Macy* decision explains that allegations of gender identity/transgender discrimination necessarily involve sex discrimination. Such cases can be viewed as sex discrimination based on non-conformance with gender norms and stereotypes under the Supreme Court's 1989 decision in *Price Waterhouse v. Hopkins*, and based on a plain reading of the statute's "because of . . . sex" language.

Applying *Macy*, the Commission has also held that an employer's restrictions on a transgender woman's ability to use a common female restroom facility constitutes disparate treatment, [Lusardi v. Dep't of the Army](#), EEOC Appeal No. 0120133395, 2015 WL 1607756 (Mar. 27, 2015), that intentional misuse of a transgender employee's new name and pronoun may constitute sex-based discrimination and/or harassment, [Jameson v. U.S. Postal Service](#), EEOC Appeal No. 0120130992, 2013 WL 2368729 (May 21, 2013), and that an employer's failure to revise its records pursuant to changes in gender identity stated a valid Title VII sex discrimination claim, [Complainant v. Dep't of Veterans Affairs](#), EEOC Appeal No. 0120133123, 2014 WL 1653484 (Apr. 16, 2014).

Sex Discrimination - Sexual Orientation

In [Baldwin v. Dep't of Transportation](#), EEOC Appeal No. 0120133080 (July 15, 2015), the Commission held that a claim of discrimination on the basis of sexual orientation necessarily states a claim of discrimination on the basis of sex under Title VII.

The *Baldwin* decision explains that allegations of sexual orientation discrimination necessarily involve sex-based considerations. First, discrimination on the basis of sexual orientation necessarily involves treating an employee differently because of his or her sex. For example, a lesbian employee disciplined for displaying a picture of her female spouse can allege that an employer took a different action against her based on her sex where the employer did not discipline a male employee for displaying a picture of his female spouse. Sexual orientation discrimination is also sex discrimination because it is associational discrimination on the basis of sex. That is, an employee alleging discrimination on the basis of sexual orientation is alleging that the employer took the employee's sex into account by treating him or her differently for associating with a person of the same sex. Finally, discrimination on the basis of sexual orientation is sex discrimination because it necessarily involves discrimination based on gender stereotypes, including employer beliefs about the person to whom the employee should be attracted.

Charge Data

In FY 2015, EEOC received a total of 1,412 charges that included allegations of sex discrimination related to sexual orientation and/or gender identity/transgender status. This represents an increase of approximately 28% over the total LGBT charges filed in FY 2014 (1,100). EEOC resolved a total of 1,135 LGBT charges in FY 2015, including through voluntary agreements providing approximately \$3.3 million in monetary relief for workers and achieving changes in employer policies so that discrimination would not recur. This reflects increases of 34% in the number of resolutions over FY 2014 (847) and 51% in the amount of monetary relief over FY 2014 (\$2.19 million). The chart below shows charges received or resolved during FY 2015.

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	Total LGBT	Sex-Gender Identity/Transgender	Sex-Sexual Orientation
Total Receipts	1,412	271	1,181
Total Resolutions	1,135	184	975
Settlements	96	12	85
	8.5%	6.5%	8.7%
Withdrawals w/Benefits	57	6	53
	5.0%	3.3%	5.4%
Administrative Closures	203	38	168
	17.9%	20.7%	17.2%
No Reasonable Cause	737	110	644
	64.9%	59.8%	66.1%
Reasonable Cause	42	18	25
	3.7%	9.8%	2.6%
Successful Conciliations	13	7	6
	1.1%	3.8%	0.6%
Unsuccessful Conciliations	29	11	19
	2.6%	6.0%	1.9%

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	Total LGBT	Sex-Gender Identity/Transgender	Sex-Sexual Orientation
Merit Resolutions	195	36	163
	17.2%	19.6%	16.7%
Monetary Benefits (Millions)*	\$3.3	\$0.3	\$3.0

Note: Charges may have multiple allegations under multiple statutes, so totals will not tally with breakdowns of specific bases or issues and are subject to updates. Monetary benefits include amounts which have been recovered exclusively or partially on non-LGBT claims included in the charge.

See our table of all [charge receipts and resolutions under Title VII](#).

Conciliation and Litigation

When the Commission finds reasonable cause to believe that discrimination has occurred, it seeks to resolve the matter voluntarily through informal means of conciliation, conference, and persuasion. If the Commission is unable to secure a voluntary resolution, it has authority to file suit in federal court. In several cases, the Commission has filed LGBT-related lawsuits under Title VII challenging alleged sex discrimination. Read about [examples of pending and resolved EEOC litigation involving Title VII sex discrimination claims](#) brought on behalf of LGBT individuals, as well as EEOC amicus briefs filed in suits brought by private individuals raising these issues.

Federal Sector Enforcement

In the federal sector, EEOC has implemented its priority for covering LGBT individuals in a variety of ways:

- Tracking gender identity and sexual orientation appeals in the federal sector
- Issuing 20 [federal sector decisions](#) in FY 2015, including finding that gender identity-related complaints and sexual orientation discrimination-related complaints can be brought under Title VII through the federal sector EEO complaint process. For example, in *Larita G. v. U.S. Postal Service*, EEOC Appeal No. 0120142154 (Nov. 18, 2015), EEOC reversed the Agency's dismissal of a hostile work environment claim on the basis of sexual orientation because such an allegation is necessarily an allegation of sex discrimination under Title VII.
- Establishing an LGBT workgroup to further EEOC's adjudicatory and oversight responsibilities
- Issuing guidance, including [instructions for processing complaints](#) of discrimination by LGBT federal employees and applicants available on EEOC's public web site
- Providing technical assistance to federal agencies in the development of gender transition policies and plans
- Providing LGBT related outreach to federal agencies through briefings, presentations, and case law updates

Training and Outreach

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were approximately 35 presentations delivered to over 4,400 federal sector audience members. These events reached a wide variety of audiences, including employee advocacy groups, small employer groups, students and staff at colleges and universities, staff and managers at federal agencies and human resource professionals. To assist in this outreach, EEOC is distributing a brochure, [Preventing Employment Discrimination Against Lesbian, Gay, Bisexual or Transgender Employees](#).

Resources

The Commission has issued various technical assistance publications on LGBT issues, including:

- Fact Sheet on Recent EEOC Litigation Regarding Title VII & LGBT-Related Discrimination, www.eeoc.gov/eeoc/litigation/selected/lgbt_facts.cfm
- Examples of Court Decisions Supporting Coverage of LGBT-Related Discrimination Under Title VII, www.eeoc.gov/eeoc/newsroom/wysk/lgbt_examples_decisions.cfm
- Federal Sector Cases Involving LGBT Individuals, www.eeoc.gov/federal/reports/lgbt_cases.cfm
- Brochure on Preventing Employment Discrimination Against Lesbian, Gay, Bisexual, or Transgender Employees, http://www.eeoc.gov/eeoc/publications/brochure-gender_stereotyping.cfm.
- OPM-EEOC-OSC-MSPB Guide: Addressing Sexual Orientation and Gender Identity Discrimination in Federal Civilian Employment, www.opm.gov/LGBTGuide
- Fact Sheet: Bathroom Access Rights for Transgender Employees Under Title VII of the Civil Rights Act of 1964, www.eeoc.gov/eeoc/publications/fs-bathroom-access-transgender.cfm

Useful resources from other agencies include:

- OPM Guidance on Employment of Transgender Individuals www.opm.gov/policy-data-oversight/diversity-and-inclusion/reference-materials/gender-identity-guidance/
- U.S. Department of Labor/OSHA Guide to Restroom Access for Transgender Workers, <https://www.osha.gov/Publications/OSHA3795.pdf>
- U.S. Department of Justice Memorandum on Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964, <http://www.justice.gov/file/188671/download>

Other Laws

Be aware of other laws that also may apply:

- Federal contractors and sub-contractors are covered by a separate, explicit prohibition on transgender or sexual orientation discrimination in employment pursuant to Executive Order 13672 and implementing regulations issued and enforced by the U.S. Department of Labor's Office of Federal Contract Compliance. For more information, see [Frequently Asked Questions](#) on E.O. 13672 Final Rule, www.dol.gov/ofccp/LGBT/LGBT_FAQs.html
- State or local fair employment laws may explicitly prohibit discrimination based on sexual orientation or gender identity. Contact information for state and local fair employment agencies can be found on the page for EEOC's [field office](#) covering that state or locality. On the other hand, if a state or local law permits or does not prohibit discrimination based on sexual orientation or gender identity, the EEOC will still enforce Title VII's discrimination prohibitions against covered employers in that jurisdiction because contrary state law is not a

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